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December 20, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20054

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FCC MAIL ROOM

Re: In the Matter of Implementation of
Infrastructure Sharing Provisions in the
Telecommunications Act of 1996.

FCC Docket No. 96-237

Dear Mr. Caton:

Enclosed herewith for filing with the Commission are the original and twelve copies of comments in the above captioned matter. The enclosed comments are being filed on behalf of the following local exchange carriers:

Castleberry Telephone Company
Ardmore Telephone Company
Hopper Telecommunications Co., Inc.
Mon-Cre Telephone Cooperative, Inc.
New Hope Telephone Cooperative, Inc.

Ragland Telephone Co., Inc.
Blountsville Telephone Co., Inc.
Bledsoe Telephone Cooperative
Farmers Telephone Cooperative, Inc.

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission

December 20, 1996

Please acknowledge receipt hereof by affixing a notation on the duplicate copy of this letter furnished herewith for such purposes and remitting same to bearer.

Very truly yours,

JACKSON THORNTON & CO., P.C.

By: *Ellen Bryson*
Ellen Bryson
Utilities Consultant

Enclosures

cc: Thomas J. Beers
Scott K. Bergmann
Kalpak Gude
International Transcription Service

Before the
FEDERAL COMMUNICATION COMMISSION
Washington, D.C. 20554

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In the Matter of)

Implementation of Infrastructure)
Sharing Provisions in the)
Telecommunications Act of 1996)

CC Docket No. 96-237

COMMENTS

Jackson Thornton & Company
200 Commerce Street
Montgomery, Alabama 36101-0096

December 20, 1996

SUMMARY

As stated in these comments, and recognized by the Commission, the purpose of this proceeding is to implement Section 259 of the 1996 Telecommunications Act. Section 259 requires an incumbent LEC to make available to a qualifying carrier such "public switched network infrastructure, technology, information, and telecommunications facilities and functions" as requested by a qualifying carrier.

Jackson Thornton's comments show that rural telephone companies should automatically qualify as lacking economies of scale and scope. These limitations along with Carrier of Last Resort obligations should automatically qualify rural telephone companies as qualifying carriers.

The Commission should not redefine the terms "technology, information, and telecommunications facilities and functions" to further the statutory goals of Section 259 because these terms have already been broadly defined in Section 251. Section 259 appears to apply only in situations where the qualifying carrier does not seek to compete with the incumbent LEC in the incumbent LEC's territory. Therefore, definitions of these terms should remain consistent throughout implementation of the Act.

Section 259 agreements are made between non-competing carriers and should not require national guidelines. LECs have been negotiating agreements since the beginning of the telecommunications industry without national rules and have been successful in reaching mutual agreement. As we strive to reduce regulation and promote competitive entry, reducing governmental involvement is key to success.

Qualifying carriers should be allowed the option to take interconnection, or unbundled network elements pursuant to either Section 251 or Section 259. Section 251 of the Act does not explicitly state that a requesting carrier must compete with the incumbent LEC. Therefore, it appears that a qualifying carrier should be able to obtain access to these elements pursuant to Section 251 whether they compete with the incumbent LEC or not. Section 259 explicitly states that a qualifying carrier can not compete with an incumbent LEC if they obtain access to interconnection, resale, or unbundled network elements pursuant to that section.

Telecommunications infrastructure development is critical to the economic viability of rural America. Advancements of infrastructure will increase public welfare by bringing new services such as distance learning and telemedicine to the rural areas. In areas where competition will be slow to come, it is important to provide other opportunities such as infrastructure sharing to preserve and advance the provisions of universal service.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Infrastructure)	CC Docket No. 96-237
Sharing Provisions in the)	
Telecommunications Act of 1996)	

COMMENTS

Jackson Thornton and Co. submits its comments in response to the Commission's Notice of Proposed Rulemaking (NPRM) in the above-captioned matter.

I. INTRODUCTION

New Section 259 of the Communications Act sets forth the infrastructure sharing requirements of the incumbent Local Exchange Carriers. These regulations specify how incumbent LECs will make available to any qualifying carrier the "public switched network infrastructure, technology, information, and telecommunications facilities and functions" upon request for purposes of enabling the qualifying carrier to provide telecommunication service or access to information services in the area in which the qualifying carrier has been designated an eligible carrier.

As the Commission notes, this statute imposes obligations and responsibilities on incumbent LECs that are designed to ensure access to evolving, advanced telecommunications infrastructure at just reasonable and affordable rates across the nation, thereby permitting qualifying carriers to benefit from the economies of scale and scope of the incumbent LECs.

Jackson Thornton's comments address the following key points: (1) rural telephone companies should automatically qualify as lacking economies of scale and scope; (2) terms in Section 259 should continue to be defined as they have been defined in other proceedings; (3) guidelines for negotiating arrangements between carriers should be minimal; and (4) qualifying carriers should be allowed the option

to obtain access to public switched network infrastructure, technology, information, and telecommunications facilities and functions alternatively from Section 251 or Section 259.

II. RURAL TELEPHONE COMPANIES SHOULD AUTOMATICALLY QUALIFY AS LACKING ECONOMIES OF SCALE AND SCOPE

In this proceeding, the Commission requests comments on the definition of a qualifying carrier, and how to determine whether a carrier lacks economies of scale and scope.

Rural telephone companies serve operating territories with geographically dispersed populations. They have proportionately fewer business customers than their urban counterparts, resulting in fewer opportunities to generate additional revenues from business customers. The unit cost of switching and outside plant facilities is higher for the rural telephone company because fixed switching costs and cable miles are spread over a smaller base of customers. Loop costs are also higher due to the longer loops needed to serve remote areas of sparsely populated territories. All of these factors reduce opportunities to take advantage of economies of scope and scale.

During 1995, the National Exchange Carrier Association, NECA, issued a study of its 1139 members and found that 59% of the rural companies serve areas in excess of 200 square miles per exchange. More than 50% of the companies surveyed have less than 20 customer access lines per square miles. Tier 1 companies (annual incomes exceeding 100 million dollars) serve 425 percent more access lines per square mile. The NECA survey also found that more than 50% of the companies have study areas with less than 2,000 access lines. The average Tier 1 study area is composed of 1.3 million customer access lines.

Jackson Thornton recognizes that there may be other telecommunications carriers that fall outside the definition of a rural telephone company that may also lack economies of scale and scope. As long as these carriers can demonstrate the lack of economies of scale and scope, they should be allowed to share facilities and functions with incumbent LECs as well.

Jackson Thornton and Co. supports the definition of a "qualifying carrier" as defined in Section 259(d), and recommends that rural telephone companies as defined in the 1996 Telecom Act automatically qualify as lacking economies of scale and scope because of the limitations on service area and access lines

set forth in the definition and the discussions provided above. Rural telephone companies also have Carrier of Last Resort obligations that qualify them as eligible carriers.

III. TERMS IN SECTION 259 SHOULD CONTINUE TO BE DEFINED AS THEY HAVE BEEN IN OTHER PROCEEDINGS

The Commission seeks comments on whether and how to define the terms “technology, information, and telecommunications facilities and functions” to further the statutory goals of Section 259(a).

Jackson Thornton believes that terms used in Section 259 should continue to be defined as they have been in other proceedings implementing the 1996 Act. Section 259 provides a statutory means for a qualifying carrier to obtain “public switched network infrastructure, technology, information, and telecommunications facilities and functions” from an incumbent LEC where the qualifying carrier does not propose to use these to compete in the incumbent LEC’s territory. If a qualifying carrier chooses to compete with the incumbent LEC, Section 259 does not apply, but rather Section 251. These terms should not be redefined for purposes of Section 259 since they have already been defined elsewhere.

If there are terms in Section 259 that need to be defined because they aren’t applicable elsewhere or haven’t been defined, the Commission should use the broadest language possible in order to accommodate the ever evolving technology and services.

IV. GUIDELINES FOR NEGOTIATING ARRANGEMENTS SHOULD BE MINIMAL

In implementing Section 259(a), the Commission seeks comments regarding rules to minimize disputes between or among parties to Section 259 agreements.

As the Commission states in the NPRM, Section 259 agreements should be the product of negotiations among parties. These agreements will be made between non-competing carriers and do not require the incumbent LEC to provide any facility or function that would be uneconomic. Telephone companies have been negotiating agreements with one another since the beginning of the

telecommunications industry and have not needed national rules to promote cooperation. Section 259 should be implemented through general rules and guidelines that allow maximum flexibility.

Section 259 requires LECs to file with the Commission or the state "any tariffs, contract or other arrangements showing the rates, terms and conditions under which such carrier is making available public switched network infrastructure and functions. By requiring this information to be filed, it should limit an incumbent LEC's ability to discriminate among carriers and should facilitate the negotiation process.

Disputes involving Section 259 agreements can be taken to the State Commissions for resolution on a case by case basis as needed.

V. QUALIFYING CARRIERS SHOULD BE ALLOWED THE OPTION TO OBTAIN ACCESS TO RESALE, INTERCONNECTION, AND UNBUNDLED NETWORK ELEMENTS ALTERNATIVELY FROM SECTION 251 OR SECTION 259

The Commission seeks comments on whether or not to give qualifying carriers the option to obtain access to resale, interconnection , and unbundled network elements alternatively pursuant to Section 251 or Section 259.

Section 251 of the Act requires incumbent LECs to provide interconnection, resale and network element unbundling to all requesting telecommunications carriers , including carriers that plan to compete with the incumbent in the incumbent's service territory. The primary intent of this section is to promote competition in the local exchange market, it does not state explicitly that the requesting carrier must compete with the incumbent LEC. Therefore, it appears that a qualifying carrier would not be precluded from obtaining access to resale, interconnection , or unbundled network elements pursuant to Section 251(c) whether or not they intend to compete in the providing incumbent LEC's service territory.

The intent of Section 259 of the Act appears to be to preserve or advance universal service through infrastructure sharing. As long as an eligible carrier does not compete with the incumbent LEC, they can obtain access to resale, interconnection, or unbundled network elements through Section 259. If the eligible carrier decides to compete with the incumbent LEC, Section 259 would not apply, and the

eligible carrier would have to seek access to resale, interconnection, and unbundled network elements through Section 251.

The Commission should allow qualifying carriers the option to take interconnection, resale, and unbundled network elements pursuant to either Sections 251 or 259.

VI. CONCLUSION

Section 251 and Section 259 have very different purposes. Section 259 was developed to be complementary to the implementation of other sections of the Telecommunications Act. The primary intent of this Section was to promote infrastructure sharing and preserve and advance the provisions of universal service in areas where competition will be slow to come. Section 251 was designed to open local exchange markets and promote competition. The Commission must be careful to blend the provisions of Section 259 with the provisions of Section 251 since the Telecommunications Act recognizes the importance of sharing network resources and not competing in areas where carriers lack economies of scale and scope.

Respectfully submitted,

JACKSON THORNTON & CO.

By: Ellen Bryson

Ellen Bryson
200 Commerce Street
Montgomery, AL 36101-0096

December 20, 1996

Certificate of Service

I hereby certify that copies of the foregoing Comments were served on the 20th day of December, 1996, by mail delivery to the persons listed below.

Ellen Bryson

By: Ellen Bryson

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